



THE CITY OF NEW YORK  
LAW DEPARTMENT

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August 8, 2022

**BY ECF**

Honorable Lorna G. Schofield  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: Richard Rosario v. City of New York, et al.,  
18 Civ. 4023 (LGS)

Your Honor:

I am one of the attorneys assigned to the defense of the above-referenced matter. I write to inform the Court about an incident that occurred in the men's restroom this afternoon during the brief five-minute break between the cross examination of Carl "Chip" Loewenson, Jr., and the charge conference.

During that five-minute break, the undersigned went to the restroom and upon entering, the plaintiff, who was without a chaperone and using one of the urinals, asked "who just walked in?" Plaintiff then turned his head around to look at who had entered, and, upon seeing the undersigned, exclaimed "oh, you fucking punk." The undersigned remained silent and did not engage with plaintiff, but plaintiff nevertheless engaged in several minutes of insulting the undersigned, primarily using multiple iterations of the sentiment "fucking punk." During this monologue, plaintiff also made comments to the effect of "we'll see if you can really fight," and "you're lucky I'm still peeing because I'd throw your ass through that fucking toilet."<sup>1</sup> In fairness to plaintiff, as the undersigned was walking out, the plaintiff claimed that he was "talking to [his] penis, not [the undersigned]."

Although this incident was the peak of plaintiff's harassing and threatening behavior towards defendants' counsel throughout this trial, it was not the first instance of such. During today's mid-morning break, plaintiff was pacing in the hallway and muttered "I smell a pussy" as

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<sup>1</sup> The undersigned did not audio record this incident, so these quotes represent the best of my recollection.

he walked past the undersigned. At other points throughout this trial (mostly during the first week), plaintiff has called defendants' counsel "piece of shit faggot," made kissing noises towards Detectives Whitaker and Martinez themselves in the hallway, and has generally made several snide remarks to defendants' counsel in passing on multiple occasions. Although it appears that plaintiff's counsel has noticed this behavior early on and appears to have been taking steps to prevent it since Day 2 of the trial, there are still times when plaintiff is left unsupervised around defendants and/or their counsel, in which he almost inevitably makes some insulting or threatening comment or makes some threatening or intimidating gesture.

Accordingly, defendants respectfully request that the Court order plaintiff to refrain from this type of behavior and direct plaintiff's counsel to ensure that plaintiff is accompanied by counsel in the courthouse at all times, including when he goes to the restroom on the first floor.

Defendants thank the Court for its consideration herein.

Respectfully submitted,

*Evan J. Gottstein* /s/  
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Special Federal Litigation Division

cc: VIA ECF  
*All Counsel of Record*